

1 EDMUND G. BROWN JR.
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 CAROL ROMEO
Deputy Attorney General
4 State Bar No. 124910
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2141
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2011-21*

13 **AMBER MARIE ANDERSON**
3321 Howard Common
Fremont, CA 94536

A C C U S A T I O N

14 **Registered Nurse License No. 641359**

15 Respondent.

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17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about July 26, 2004, the Board of Registered Nursing issued Registered Nurse
24 License Number 641359 to Amber Marie Anderson (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought here and will expire on
26 June 30, 2012, unless renewed.

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1 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
2 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
3 administer to another, any controlled substance as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
5 defined in Section 4022.

6 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
7 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
8 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
9 himself or herself, any other person, or the public or to the extent that such use impairs his or her
10 ability to conduct with safety to the public the practice authorized by his or her license."

11 9. Section 4022 of the Code states, in pertinent part:

12 "‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use in
13 humans or animals, and includes the following:

14 "(a) Any drug which bears the legend: Caution: federal law prohibits dispensing without
15 prescription, ‘RX’ only, or words of similar import.

16 "(b) Any device which bears the statement: Caution: federal law restricts this device to
17 sale by or on the order of a ____, ‘RX’ only, or words of similar import, the blank to be filled in
18 with the designation of the practitioner licensed to use or order use of the device.

19 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
20 prescription or furnished pursuant to Section 4006."

21 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
22 controlled substance, except that furnished to a person upon the prescription of a physician,
23 dentist, podiatrist, or veterinarian.

24 11. Section 11350(a) of the Health and Safety Code states:

25 "Except as otherwise provided in this division, every person who possesses (1) any
26 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
27 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
28 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section

1 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
2 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
3 licensed to practice in this state, shall be imprisoned in state prison."

4 12. Section 11377(a)(5) of the Health and Safety Code states:

5 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
6 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
7 Business and Professions Code, every person who possesses any controlled substance which is
8 (5) specified in subdivision (d), (e), (f) of Section 11055, unless upon the prescription of a
9 physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished
10 by imprisonment in a county jail for a period of not more than one year or in the state prison."

11 COST RECOVERY

12 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations
14 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 DRUGS

17 14. "Ritalin" is a Schedule II controlled substance pursuant to Health and Safety Code
18 section 11055(d)(6) and is a dangerous drug under Business and Professions Code section 4022.

19 15. "Cocaine" is a Schedule II controlled substance pursuant to Health and Safety Code
20 section 11055(b)(6) and is a dangerous drug under Business and Professions Code section 4022.

21 16. "Flexeril" is a brand name for cyclobenzaprine and is a dangerous drug under
22 Business and Professions Code section 4022. Flexeril is used in treatment for muscle strain and is
23 used as a muscle relaxant.

24 17. "Nordiazepam" is a Schedule IV controlled substance pursuant to Health and Safety
25 Code section 11057(d)(9) and is a dangerous drug under Business and Professions Code section
26 4022. Nordiazepam is also known by the brand name of Valium and is used in treatment for
27 anxiety and also for relief of muscle spasms.

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1 18. "Temazepam" is a Schedule IV controlled substance pursuant to Health and Safety
2 Code section 11057(d)(29) and is a dangerous drug under Business and Professions Code section
3 4022.

4 FIRST CAUSE FOR DISCIPLINARY ACTION
5 (Unprofessional Conduct)
6 (Bus. & Prof. Code §2761(a))

7 19. Respondent has subjected her Registered Nurse License to disciplinary action for
8 unprofessional conduct under Code section 2761(a). The circumstances are as follows:

9 a. On or about February 8, 2009, Fremont Police Department (Fremont PD) police
10 officers served a search warrant at Respondent's residence located at 3321 Howard Common,
11 Fremont, California. During the search, Respondent told the officers that the residence belonged
12 to her and that Trevor Thompson (Thompson) lived with her in the master bedroom.

13 b. A Fremont PD officer and a K-9 conducted a search of the residence and found
14 a scale and multiple baggies and containers of suspected cocaine in various locations of the
15 residence. The officers also found an unlabeled orange pill bottle containing fifty-three 10mg
16 tablets of Ritalin. The officers found a substance they suspected to be cocaine. The officers later
17 conducted a presumptive test on the suspected cocaine and the results tested positive for cocaine.
18 Thompson told the officers that all of the cocaine found in the residence belonged to him and it
19 was for his own personal use. Thompson also told the officers that Respondent knew he had the
20 cocaine in the residence. Respondent was then placed under arrest for violating Health and
21 Safety Code section 11351 (possession of cocaine for sale). Respondent was taken to the
22 Fremont PD station. Respondent admitted to the officers that she and Thompson used the cocaine
23 for themselves and a small group of friends. Respondent admitted that she had been using
24 cocaine for approximately one year. Respondent admitted that she knew there was cocaine in the
25 residence and that Thompson was selling cocaine to make money. When asked about the orange
26 pill bottle found in the search, Respondent stated that it was Ritalin. Respondent admitted that
27 she did not have a prescription for Ritalin and only took it as a dietary supplement. Respondent
28 and Thompson were taken into custody by the Fremont PD.

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1 c. On or about February 8, 2010, Department of Consumer Affairs, Division of
2 Investigation (DOI), Senior Investigator Don Tsue and Division of Investigation Investigator
3 Andrew Omahen interviewed Respondent at her residence located at 3321 Howard Common,
4 Fremont, California 94536. When asked if she was currently on any drugs, whether legal or
5 illegal, Respondent stated that she currently has a prescription for Flexeril. Respondent stated
6 that the Flexeril is for muscle strain and was written by her physician, Dr. Chen. Respondent
7 stated that she has never used any illegal drugs. She stated that at the time of the arrest she was
8 not on any medications or narcotics. Regarding the arrests at her residence, Respondent stated
9 that the police suspected that her roommate (and her boyfriend) was selling cocaine. Respondent
10 reported that the police found a scale, baggies and cocaine at her residence. She also reported that
11 the police also found a prescription medication of Ritalin, which she claimed belonged to her
12 boyfriend's brother. Respondent told the DOI Investigators, that she knew that Ritalin can used
13 as an appetite suppressant and that she had taken a total of two tablets over one or two days.
14 Respondent also stated to the investigators that the police seized the two Ritalin tablets which
15 were in her purse. Respondent told the DOI investigators that she was taken to the Fremont
16 Police Station and questioned by officers. Respondent told them that she had found cocaine in
17 her house before her arrest. Respondent also told the DOI investigators that she had not seen
18 cocaine used at all and that she has never used cocaine herself.

19 d. On February 8, 2010, during her interview with DOI investigators, Respondent
20 agreed to submit a urine sample for drug screening. On February 15, 2010, the results of
21 Respondent's toxicology tests for the sample were positive for Nodiazepam and
22 Temazepam. On March 25, 2010, Investigator Omahen called Respondent and
23 told her that the drug results came back positive for Nordiazepam and Temazepam. Respondent
24 told Investigator Omahen that she completely forgot that she took a Valium tablet. Respondent
25 also told the DOI investigator that she had been taking Flexeril for her back pain at the time and
26 that her boyfriend's brother gave her a pill, which he told her was a muscle relaxant. This
27 contradicts the statement she made to the investigators on February 8, 2010, when she stated that
28 she had a prescription for Flexeril. In fact, Respondent did not have a prescription for Flexeril.

1 SECOND CAUSE FOR DISCIPLINARY ACTION
2 (Unlawfully Obtain, Possess, or Self-Administered Controlled Substance)
3 (Bus. & Prof. Code §2762(a))

4 20. Complainant realleges the allegations of Paragraph 19, which are incorporated
5 here by reference as though full set forth.

6 21. Respondent has subjected her Registered Nurse License to disciplinary action for
7 unprofessional conduct under Section 2761(a) of the Code, as defined by Code section 2762(a).
8 Specifically, Respondent engaged in unprofessional conduct by unlawfully obtaining, possessing,
9 or self-administering controlled substances or dangerous drugs. The circumstances are as
10 follows:

11 a. She obtained or possessed Cocaine, a controlled substance and dangerous drug, in
12 violation of Health and Safety Code section 11350(a)(1) and Code section 4060.

13 b. She obtained, possessed or self-administered Ritalin, a controlled substance and
14 dangerous drug, in violation of Health and Safety Code sections 11350(a)(2) and 11377(a)(5), and
15 Code section 4060.

16 c. She obtained, possessed or self-administered Flexeril, a dangerous drug.

17 d. She obtained, possessed, or self-administered Nordiazepam, a controlled substance
18 and dangerous drug, in violation of Health and Safety Code section 11350(a)(2) and Code section
19 4060.

20 e. She obtained, possessed, or self-administered Temazepam, a controlled substance and
21 dangerous drug, in violation of Health and Safety Code section 11350(a)(2) and Code section
22 4060.

23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board of Registered Nursing issue a decision:

26 1. Revoking or suspending Registered Nurse License Number 641359, issued to Amber
27 Marie Anderson;

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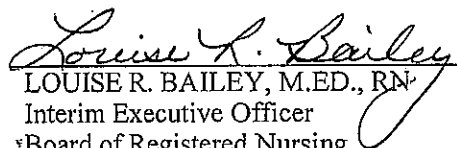
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2. Ordering Amber Marie Anderson to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/7/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
*Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2010200841
CR: 06/28/10